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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 378

UNIVERSAL EQUIPMENT COMPANY, A DELAWARE CORPORATION,

Petitioner,

vs.

HARVEY CORPORATION, A FLORIDA CORPORATION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

THOMAS H. ANDERSON,
ANDREW T. HEALY,
Pacific Building,
Miami, Florida.
M. A. BASKIN,
Pacific Building,
Miami, Florida.
Counsel for Petitioner.

ANDERSON & NADEAU,
904 First National Bank Bldg.
Miami, Florida.
Of Counsel.

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Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of Florida, entered in the above entitled case on April 27, 1951, rehearing denied July 11, 1951.

Opinions Below

The first opinion of the Supreme Court of Florida is reported in 29 So. (2d) 700, dated March 28, 1947. The second opinion is reported in 42 So. (2d) 577, dated September 23, 1949. The third and last is a memorandum opinion (R—88-90), which is unreported. This opinion was based upon an appeal taken from the final decree of the Circuit Court of Dade County, which is unreported (R—76-83).

The Jurisdiction

The jurisdiction of this Court is invoked under 28 U.S.C., Section 1257 (3).

The Stage at Which Federal Questions Were Raised

The Federal questions were first raised by the appeal to the Supreme Court of Florida from the above decree and by the assignments of errors which challenged the correctness of the decree and also by petitions for rehearing in the Supreme Court of Florida (R—67, 92).

Questions Presented

Whether:

(a) A judgment entered by a state court without notice and an opportunity to be heard is violative of procedural due process guaranteed by the Fourteenth Amendment; and

(b) A case arbitrarily and capriciously decided in violation of settled principles and contrary to undisputed facts, though the Court so deciding had jurisdiction over the suit, is in violation of the due process clause.

Statement

A tenant sued his landlord in an equity proceeding to recover the possession of real estate, together with damages for the detention, past, present, and prospective (R—1-13). The Circuit Court for Dade County determined that the detention period extended from July 28, 1944, to February 5, 1945, and awarded as damages for this period the sum of $25,240.12. The Supreme Court of Florida reversed, holding that the wrong measure of damages was employed (29 So. (2d) 700, dated March 28, 1947). Pursuant to the Supreme Court's mandate the Circuit Court of Dade

County entered another decree in which it recited that the tenant had refused to offer any further evidence of damages and therefore no damages would be allowed since there was no basis in the record. The Supreme Court of Florida reversed, holding that the detention period expired on February 5, 1945, that based upon evidence in the record, the value of the leasehold estate to April 1, 1945, was $52,800, and directed the entry of a judgment for this sum, less $22,800, the assumed amount of the rent up to February 5, 1945. This amount the Supreme Court of Florida said was $29,700, although the subtraction is obviously incorrect. Upon receipt of the mandate by the Circuit Court of Dade County on this last opinion, it proceeded to enter two judgments against the petitioner here, as follows:

1. A judgment for $29,600, with interest from February 5, 1945, a total of $38,716.80, for which execution was awarded.

2. A judgment for $6,855.52, with interest from February 5, 1945, a total of $8,967.02, for which execution was awarded.

The Supreme Court, by a memorandum decision dated April 27, 1951, affirmed this decree (R—88-90) with one Justice dissenting. The dissenting Justice held that judgment No. 2 was entered without authority of law. A petition for rehearing (R—92) challenged the validity of both judgments on Federal Constitutional grounds. The petition was denied.

Specification of Errors to Be Urged

The Supreme Court of Florida erred:

1. In holding that the petitioner was liable for damages beyond the admitted and adjudicated date of the detention period as fixed by both the Circuit Court of Dade County and the Supreme Court of Florida.

2. In holding that judgment No. 2, which was entered without notice or an opportunity to be heard, was a valid judgment.

3. In affirming the order of the Circuit Court.

Reasons for Granting the Writ

1. The decision below as to the judgment for $29,600 was entered by the Supreme Court of Florida after the Circuit Court of Dade County had decided as a matter of fact and law that the plaintiff below had failed to prove any damages. The Supreme Court of Florida arbitrarily and capriciously, upon the same record, decided that the damages were $29,700, but in doing so, used as a basis for the measurement of damages the alleged value of the leasehold estate which was the subject of the suit and extended that value to April 1, 1945, some 56 days beyond the detention period as previously established both by the Circuit and Supreme Courts. The property involved in the case was a Miami Beach hotel, the income of which was largely, if not wholly, obtained in the season between January 1st and March 31st, so that the extension of the detention period to March 31st included that portion of time when the hotel's income was the greatest. Actually, the difference between the value of the leasehold estate as of February 5, 1945, and as of March 31, 1945, was a considerable sum of money, for which period the Supreme Court of Florida undertook without hearing to enter judgment against the petitioner, notwithstanding its determination that the detention period expired on February 5, 1945.

As a matter of fact, the record shows that the plaintiff below (respondent here) was in possession of the hotel from February 5, 1945, and therefore, that the petitioner could not have been responsible for damages for the detention after that date. Both Courts and all counsel agree

that possession was awarded on February 5, 1945. Hence, the imposition of damages beyond that date was arbitrary and capricious and was made in plain violation of the rules set forth in *Postal Telegraph Cable Company* v. *Newport,* 247 U. S. 464, 38 S. Ct. 566, 62 L. Ed. 1215, dated June 10, 1918; *Williams* v. *Tooke,* 108 Fed. (2d) 758 (5th Cir. 1940).

As to judgment No. 2 for $6,855.52 which, together with interest, amounts to $8,967.02, there was plainly no authority in law for the entry of this judgment, as one of the Justices of the Supreme Court so held in a dissenting opinion. When the case had last been in the Supreme Court of Florida, it was reversed with directions to enter a judgment in favor of the plaintiff below for $29,700. The lower Court not only entered a judgment for this amount, but, without trial, entered also a judgment for $6,855.52, with interest from Febrauary 5, 1945. As to the entry of this judgment, the petitioner had neither a hearing nor an opportunity to be heard at any time. The petitioner was therefore deprived of its rights under the Fourteenth Amendment. *Dartmouth College* v. *Woodward,* 4 Wheaton 518, 4 L. Ed. 629 (1819).

Argument

The total amount which was awarded as damages against the petitioner by the last judgment of the Circuit Court of Dade County is pretty close to $50,000. It is mathematically demonstrable that the petitioner has been excessively mulcted in damages by this judgment in a sum over $28,000, a not inconsiderable amount.

The controversy here arose because the United States Army took possession of a hotel on Miami Beach which belonged to the petitioner and which had been leased to the respondent. The hotel was surrendered by the Army to the petitioner in July, 1944. Petitioner commenced

making repairs to restore the hotel to the condition that obtained prior to the Army's occupation. Then the respondent became involved in the controversy with the petitioner as to whether or not the petitioner intended to return the hotel to the respondent when the repairs were made. Regardless of whether the respondent's wrongs were real or imaginary, it applied to the Circuit Court for relief by a bill in chancery in which a receiver was appointed to the hotel. The receiver stayed in possession until February 5, 1945, at which time he surrendered possession of the hotel to the respondent with every room in the house occupied. The Circuit Court then determined that the detention period had extended from July 28, 1944, to February 5, 1945. Obviously, in the warm summer months and for the latter part of the year before the beginning of the winter season in Florida where there was no real patronage for the hotel. Actually, the hotel was in possession of the Court's receiver appointed for the benefit of the respondent who could have got possession virtually at any time upon application to the Court since the receiver was for its benefit and was not a general chancery receiver.

During the proceedings one of the witnesses testified that the value of the leasehold estate to March 31, 1945, was $52,500. In awarding damages originally the Circuit Court terminated the damage period as of February 5, 1945, a date accepted by all parties as being correct. Therefore, there can be no doubt about this point being the terminal stage of the damage period. The Supreme Court reversed this judgment holding that the wrong measure of damages had been applied and directed further proceedings to be had. The Circuit Court referred the cause to a Special Master to take further testimony, but the plaintiff below declined to proceed with the Special Master, contending that the record contained sufficient evidence to warrant an award

of damages. The Master refused to follow this argument and held that there was no such evidence in the record. The Circuit Court confirmed the Master's report and held that the plaintiff was not entitled to any damages.

On appeal, without further hearing, the Supreme Court directed the entry of a judgment for $52,500. This amount represented an award for a period which extended for 54 days beyond the detention period, less accrued rent of $22,800.

It is obvious that the petitioner here has not had a full and fair opportunity to be heard on any phase of this matter, since the entry of the original judgment which was reversed by the Supreme Court of Florida. The Supreme Court's opinion is demonstrably inaccurate because the damages awarded are for a period during which the petitioner admittedly caused no damage; and the amount is not inconsiderable because it represents the time of greatest incomes of seasonal hotels on Miami Beach, namely, from the first part of February until the end of March.

As to judgment No. 2, for $6,855.52, the Court need seek no further to determine the illegality of this than the dissenting opinion of the Justice of the Supreme Court who wrote the two prior opinions. In the course of this dissenting opinion the learned Justice said:

> "The only item encompassed by our reversal order was the amount recoverable for the detention. The appellant is entitled to its day in court on the question of whether or not it should pay to the plaintiff-appellee the apportioned part of the $7,600.00 paid to the Receiver in 1944 prior to his discharge in 1945."

It is respectfuly submitted that the writ should be granted and the judgment of the Supreme Court of Florida quashed.

Respectfully submitted,

THOMAS H. ANDERSON,
HERMAN ANDERSON,
Attorneys for Petitioner.

ANDREW T. HEALY,
Pacific Building,
Miami, Florida.
M. A. BASKIN,
Pacific Building,
Miami, Florida.
ANDERSON & NADEAU,
904 First National Bank Bldg.,
Miami. Florida.
Of Counsel.

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BRIEF IN OPPOSITION TO CERTIORARI.

Winslow Sherman Watts,
1220 duPont Building,
Miami 32, Florida,
Attorney for Respondent.

Watts & Watts,
1220 duPont Building,
Miami 32, Florida.

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